

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B02

PLR-148664-09

Date:

January 12, 2010

### Legend

X =

Y =

State =

D1 =

Dear

This responds to a letter dated October 30, 2009, and subsequent correspondence submitted on behalf of X by its authorized representative, requesting relief under § 1362(b)(5) of the Internal Revenue Code for X to elect to be an S corporation, and requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations for X to treat Y as a qualified subchapter S subsidiary (QSub).

The information submitted states that X was formed in State on D1. It was intended for X to be an S corporation effective D1. In addition, X intended to make a QSub election for Y effective D1. However, due to inadvertence, Form 2553, Election by a Small Business Corporation, and Form 8869, Qualified Subchapter S Subsidiary Election, were not timely filed.

Section 1362(a) provides that a small business corporation may elect to be an S corporation.

Section 1362(b) provides the rule on when an S election will be effective. Generally, if an S election is made within the first two and one-half months of a corporation's taxable year, then the corporation will be treated as an S corporation for the year in which the election is made. Section 1362(b)(3) provides that if an S election is made after the first two and one-half months of a corporation's taxable year, then the corporation will not be treated as an S corporation until the taxable year after the year in which the S election is made.

Section 1362(b)(5) provides that if (A) an election under § 1362(a) is made for any taxable year after the date prescribed by § 1362(b) for making the election for the taxable year or no § 1362(a) election is made for any taxable year, and (B) the Secretary determines that there was reasonable cause for the failure to timely make the election, then the Secretary may treat the election as timely made for such taxable year and § 1362(b)(3) shall not apply.

Section 1361(b)(3)(A) provides that a QSub shall not be treated as a separate corporation, and all assets, liabilities, and items of income, deduction, and credit of a QSub shall be treated as assets, liabilities, and such items (as the case may be) of the S corporation.

Section 1361(b)(3)(B) defines a QSub as a domestic corporation which is not an ineligible corporation, if 100 percent of the stock of the corporation is held by an S corporation, and the S corporation elects to treat the corporation as a QSub.

Section 1.1361-3(a) of the Income Tax Regulations provides the time and manner of making a QSub election. A taxpayer makes a QSub election with respect to a subsidiary by filing a Form 8869 with the appropriate service center. Section 1.1361-3(a)(4) provides that a QSub election cannot be effective more than two months and 15 days prior to the date of filing.

Section 301.9100-1(c) gives the Commissioner discretion to grant reasonable extensions of time to make regulatory elections under the rules of §§ 301.9100-2 and 301.9100-3. Under § 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a regulation published with the Federal Register.

Section 301.9100-3 sets forth the standards that the Commissioner uses to determine whether to grant a discretionary extension of time. These standards indicate that the Commissioner should grant relief when the taxpayer provides evidence proving to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the Government.

Based solely on the facts and the representations submitted, we conclude that X has established reasonable cause for failing to make a timely election to be an S corporation effective D1. Accordingly, X is granted an extension of time of 60 days from

the date of this letter to file a properly executed Form 2553 with the appropriate service center, effective D1. A copy of this letter should be attached to the Form 2553.

Additionally, based solely on the facts submitted and the representations made, we conclude that X has satisfied the requirements of sections 301.9100-1 and 301.9100-3. As a result, X is granted an extension of time of 60 days from the date of this letter to elect to treat Y as a QSub effective D1. Accordingly, provided that X makes the above-mentioned S election and makes a QSub election for Y by filing a completed Form 8869 effective D1 with the appropriate service center within 60 days from the date of this letter, then such election will be treated as timely made for D1. A copy of this letter should be attached to the Form 8869.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code, including whether X was or is a small business corporation under § 1361(b) or whether Y is an eligible QSub.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to X's authorized representative.

Sincerely,

Curt G. Wilson  
Associate Chief Counsel  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2)  
Copy of this letter  
Copy for § 6110 purposes